

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

IN RE:

JAMES HOYER P.A.,

Debtor.

Case No.: 8:19-bk-010787-CPM
Chapter 7

/

DEBTOR'S MOTION FOR SANCTIONS FOR VIOLATION OF AUTOMATIC STAY

COMES NOW Debtor, James Hoyer P.A., by and through their undersigned counsel, and pursuant to 11 U.S.C. § 362(a) and (k), and hereby moves the court for an award of actual damages against Creditor, Lexis Nexis, for a violation of the automatic stay and order of the Court, and in support alleges the following:

1. Despite the Debtor's filing of bankruptcy, Creditor, Lexis Nexis, willfully continued with collection of an alleged debt against property of the Debtor's estate, after being properly notified of this bankruptcy.
2. Creditor was added as a new creditor on November 21, 2019.
3. A change of address was submitted to the Court on December 5, 2019.
4. Creditor was served with Amended Schedule E/F, Declaration Under Penalty of Perjury for Non-Individual Debtors, Amended Summary of Assets and Liabilities (D.E. 5) and Notice of Chapter 7 Bankruptcy Filing (D.E. 3) on December 5, 2019.
5. The Debtor has no prior bankruptcies.

COUNT I: AUTOMATIC STAY APPLIES TO LEXIS NEXIS

6. Bankruptcy Code Section §362(a) stays action to collect a debt in any capacity, or to assess or recover a claim against a debtor that arose before the commencement of the bankruptcy proceeding. Section §362(a)(3) prohibits any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.
7. Lexis Nexis is enjoined by the automatic stay from attempts to collect a debt.

COUNT II: THE COLLECTION OF A DEBT

POST-PETITION BY LEXIS NEXIS VIOLATES THE AUTOMATIC STAY

8. Once a creditor receives notice of a bankruptcy filing, the creditor has an affirmative duty to undo its violation of automatic stay. In re Keen, 301 B.R. 749 (Bankr. S.D. Fla. 2003).
9. There can be no doubt that Lexis Nexis had knowledge of the Debtor's pending bankruptcy case by virtue of being added as a creditor on November 21, 2019 and by receiving service of the Notice of Chapter 7 Bankruptcy Filing (D.E. 3) on December 5, 2019.

COUNT III: VIOLATION OF THE STAY WAS WILLFUL

10. A willful violation of the automatic stay occurs when the creditor knows that the stay has been invoked and deliberately intended the action that violates the stay. In re Hedetneimi, 297 B.R. 837 (Bankr. M.D. Fla. 2003).
11. The creditor knew the stay was invoked.
12. The Debtor has the burden of providing the creditor with actual notice. Once the creditor receives actual notice, the burden shifts to the creditor to prevent violations of the automatic stay. Mitchell Const. Co., Inc. v. Smith (In re Smith), 180 B.R. 311, 319 (Bankr. N.D. Ga. 1995).
13. The creditor had actual notice when it was added as a creditor and by receiving service of the Notice of Chapter 7 Bankruptcy Filing (D.E. 3) on December 5, 2019.
14. Prior to any Bankruptcy filing, a letter requesting the firm's account be cancelled was sent to the Lexis Nexis representative, Jim Dunwoody via email to Jim.dunwoody@lexisnexisrisk.com on September 16, 2019. See **Exhibit "A"**.
15. With notice of the bankruptcy case, the Creditor sent a collection effort via email to Debtor for Billing Period February 1, 2020-February 29, 2020. See **Exhibit "B"**.
16. With notice of the bankruptcy case, the Creditor sent a collection effort via email to Debtor for Billing Period March 1, 2020-March 31, 2020. See **Exhibit "C"**.
17. With notice of the bankruptcy case, the Creditor sent a collection effort via email to Debtor for Billing Period April 1, 2020-April 31, 2020. See **Exhibit "D"**.

DAMAGES

18. Section 362(k)(1) provides that the Court shall award an individual actual damages, including his costs and attorney's fees.
19. The Debtor is entitled to reasonable attorney's fees in the amount of \$350.00 for the review of the information, the drafting of this Motion, and the attendance at any hearing.

20. The Creditor should be sanctioned in the amount of \$750.00 for the numerous and repeated violations of the Automatic Stay.

WHEREFORE, the Debtor, James Hoyer P.A., respectfully requests the Court award actual damages and reasonable attorney's fees, against Creditor, Lexis Nexis, for a violation of the automatic stay. Since actions taken in violation of the automatic stay are void, the Court is respectfully requested to find:

- A. Lexis Nexis in violation of the automatic stay;
- B. Actual damages should be awarded to the Debtor;
- C. Impose sanctions, including awarding attorney's fees; and
- D. Grant such further relief as may be appropriate.

Dated: May 18, 2020.

Respectfully submitted,

/s/ Kristina E. Feher
FEHER LAW, P.L.L.C.
Kristina E. Feher
Florida Bar No: 52082
4437 Central Avenue
St. Petersburg, FL 33713
Telephone: (727) 359-0367
Facsimile: (727) 359-0368
Email: KFeher@feherlaw.com
Counsel for Debtor

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the foregoing *Debtors' Motion For Sanctions For Violation Of Automatic Stay* has been served by the Court's CM/ECF system upon the **U.S. Trustee, Trustee**, the Chapter 7 Trustee, Doug Menchise, Jim Dunwoody at Jim.dunwoody@lexisnexisrisk.com and **Lexis Nexis** c/o Registered Agent CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324, on this 18th day of May, 2020.

/s/ Kristina E. Feher
KRISTINA E. FEHER

EXHIBIT A



1 (800) 651-2502
www.JamesHoyer.com

September 16, 2019

LexisNexis | Legal & Professional
c/o Jim Dunwoody
via email: Jim.dunwoody@lexisnexisrisk.com

RE: Account # 5006879

Dear Jim,

Due to the recent death of its majority shareholder and resulting loss of financing, James Hoyer, P.A. is in the process of dissolving and will likely declare Chapter 7 bankruptcy in the next few months. As such, we are requesting that the firm's account be cancelled. Please let me know what you need to facilitate this process.

Respectfully

/s/ Jesse Hoyer
Jesse Hoyer, President
James Hoyer, P.A.

EXHIBIT B

From: [LexisNexis Billing Statements](#)
To: [Sean Estes](#); [Sean Estes](#)
Subject: LexisNexis - #5006879-20200229 - February Invoice
Date: Tuesday, March 3, 2020 2:10:53 PM

Accurint February 2020 Invoice

Dear Accurint® customer:

Your Accurint Billing ID # 5006879 invoice for February 2020 is now available. Please note for security reasons this email does not contain any direct links to the Accurint website or your billing documents. For more important security information, please see the bottom of this email.

Accurint offers the following ways you can access your billing documents:

1. **View your invoices and activity detail**

Have your System Administrator sign in to the LexisNexis® Electronic Payment & Invoice Center, at <https://invoice.risk.lexisnexis.com/>. Select "Invoices" to access your billing statement and then select "Administration/Account" to view your activity detail.

2. **If you are a System Administrator, you can access your invoices directly through your web browser**

To view your invoice, copy and paste the text below into the address bar of your web browser.

https://billing.lexisnexis.com/acc/6d784a985a084daf21df6416d068d479/i_2002



Pay your account online!

For your convenience, we accept credit cards (Visa, MasterCard and American Express) and electronic checks as forms of payment. To pay your invoice, begin in the "Account Summary" section of the "Dashboard" and select "Schedule Payment." You may also set up an automatic payment service by selecting "Auto-Schedule Payments" underneath the "Payments" section. Please note that only your System Administrators can make payments online.

Questions?

For questions about your bill, please contact Accurint Billing at **866-528-0570** or via email at LNBilling@lexisnexis.com.

Important Security Information

- Never click or follow links to Accurint from any email messages because if you do so you may be taken to a site that looks like Accurint but is not the Accurint site. If you did follow such links, please change your password immediately.
- When signing in to Accurint, always verify the URL on your browser's address bar is <https://secure.accurint.com/app/bps/main> and that you see a "secure padlock icon" within your web browser.



Thank you,
Accurint



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LexisNexis®

28330 Network Place
Chicago, IL 60673-1283
866-528-0570

LexisNexis, a division of RELX Inc
For itself or its affiliates

JAMES HOYER, P.A.
Attn : Sean Estes
2801 West Busch Blvd.
Suite 200
TAMPA, FL 33618 USA

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Invoice

Current Amount	USD \$0.00
Due	
Outstanding Balance	USD \$25.00
Total Balance	USD \$25.00
Invoice Number	5006879-20200331
Invoice Date	Mar 31, 2020
Billing ID	5006879
Terms	Net 20
Representative	Jim Dunwoody
Billing Period	3/1/2020 3/31/2020

Questions about your bill?
866-528-0570

LNBillng@lexisnexis.com

Please Remit Payment To:
LexisNexis Risk Solutions FL Inc.
Billing ID 5006879
28330 Network Place
Chicago, IL 60673-1283

Payments, Credits & Adjustments

	Total	\$0.00
	Total Charges	\$0.00
	Total Tax	\$0.00

New Activity Summary

	Total Charges	\$0.00
	Total Tax	\$0.00
5006879-20200331	Due Date 4/20/2020	Total

Account Balance Outstanding

Invoice Date	Due Date	Invoice Number	Invoice Amount	Amount Applied	Invoice Balance
9/30/2019	10/20/2019	5006879-20190930	\$25.00	\$0.00	\$25.00
				Prepaid/Unapplied Cash	\$0.00
Account Balance Outstanding					\$25.00

Please include your full invoice number on all remittance to ensure proper credit.

In order to ensure our customers are not impacted by fraudulent phishing attempts we advise you to never accept remittance information change requests from unsolicited emails or phone calls. All LexisNexis Risk Solutions changes will be communicated via messages attached to your invoice. Please report any suspicious activity to security@relx.com.



28330 Network Place
Chicago, IL 60673-1283
866-528-0570

LexisNexis, a division of RELX Inc
For itself or its affiliates

JAMES HOYER, P.A.
Attn : Sean Estes
2801 West Busch Blvd.
Suite 200
TAMPA, FL33618 USA

Invoice

Current Amount	USD \$0.00
Due	
Outstanding Balance	USD \$25.00
Total Balance	USD \$25.00
Invoice Number	5006879-20200430
Invoice Date	Apr 30, 2020
Billing ID	5006879
Terms	Net 20
Representative	Jim Dunwoody
Billing Period	4/1/2020 4/30/2020

Questions about your bill?
866-528-0570

LNBilling@lexisnexis.com

Please Remit Payment To:
LexisNexis Risk Solutions FL Inc.
Billing ID 5006879
28330 Network Place
Chicago, IL 60673-1283

Payments, Credits & Adjustments

	Total	\$0.00
	Total Charges	\$0.00
	Total Tax	\$0.00

New Activity Summary

	Due Date	Total	\$0.00
5006879-20200430	5/20/2020		

Account Balance Outstanding

Invoice Date	Due Date	Invoice Number	Invoice Amount	Amount Applied	Invoice Balance
9/30/2019	10/20/2019	5006879-20190930	\$25.00	\$0.00	\$25.00
				Prepaid/Unapplied Cash	\$0.00
Account Balance Outstanding					\$25.00

Please include your full invoice number on all remittance to ensure proper credit.

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